

American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
www.aflcio.org

EXECUTIVE COUNCIL

RICHARD L. TRUMKA
PRESIDENT

Michael Sacco
Harold Schaitberger
Leo W. Gerard
Nancy Wohlforth
Randi Weingarten
Patrick D. Finley
Ken Howard
General Holiefield
Terry O'Sullivan
Loretta Johnson
DeMaurice Smith
David Durkee
Joseph T. Hansen
Paul Rinaldi

ELIZABETH H. SHULER
SECRETARY-TREASURER

Michael Goodwin
Edwin D. Hill
William Hite
Rose Ann DeMoro
Rogelio "Roy" A. Flores
Newton B. Jones
James Boland
Lee A. Saunders
Veda Shook
Capt. Lee Moak
Sean McGarvey
D. Taylor
Harold Daggett

TEFERE GEBRE
EXECUTIVE VICE PRESIDENT

Robert A. Scardelletti
Clyde Rivers
Larry Cohen
Fred Redmond
Fredric V. Rolando
D. Michael Langford
Bruce R. Smith
James Andrews
Walter W. Wise
Joseph J. Nigro
Laura Reyes
Kenneth Rigmaiden
Bhairavi Desai

R. Thomas Buffenbarger
Cecil Roberts
Gregory J. Junemann
Matthew Loeb
Diann Woodard
Baldemar Velasquez
Bob King
Maria Elena Durazo
Lawrence J. Hanley
James Callahan
J. David Cox
Stuart Appelbaum
James Grogan

Sent via electronic mail: rule-comments@sec.gov

February 3, 2014

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Crowdfunding, File No. S7-09-13

Dear Ms. Murphy:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to provide comment to the Securities and Exchange Commission (the "SEC") on the proposed rule on crowdfunding. This rule is required by the Jumpstart Our Business Startups Act (the "JOBS Act"). We are concerned that the proposed rule goes beyond the JOBS Act's statutory requirements. We urge you to rework key elements of the proposed rulemaking to ensure that investor protections are not sacrificed in the rush to implement the JOBS Act.

The AFL-CIO is the umbrella federation for U.S. labor unions, including 56 unions representing 12.5 million union members. Union-sponsored and Taft-Hartley pension plans hold more than \$540 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers. The retirement savings of working families depend on strong investor protections and well regulated capital markets.

History shows that strong investor protections facilitate capital formation by startups and small businesses, and that weak investor protections impede capital formation. In the 1990s, Canadian regulators condemned the "continuing occurrence of shams, swindles and market manipulations" on the Vancouver Stock Exchange of loosely regulated small company stocks.¹ More recently, the London Stock Exchange's

¹ "High Risks Don't Deter U.S. Funds From Vancouver Deals," The New York Times, August 8, 1994.

Alternative Investment Market was described by former SEC Commissioner Roel Campos as a “casino” for its highly speculative small company stock listings.²

By their very nature, crowdfunding investments are likely to be highly illiquid and inherently risky. For this reason, JOBS Act prudently limits the total amount of crowdfunding investments that are permitted by individual investors in a particular year. Investors may only invest up to the greater of \$2,000 or 5 percent of an investor’s annual income or net worth “if either the annual income or the net worth of an investor is less than \$100,000;” and up to 10 percent “if either the annual income or net worth is equal to more than \$100,000.”

The statute does not clarify which limits should be imposed for investors who meet only one of the income and net worth limits of \$100,000. The SEC’s proposed crowdfunding rule interprets this ambiguity to maximize the amount individuals can invest in crowdfunding offerings, rather than seek to minimize investors’ potential losses. For example, under the SEC’s proposed rule, an investor with \$100,000 in assets but little or no income could invest up to \$10,000 per year.

In such cases, we urge the SEC to adopt a more rigorous limit of \$2,000 or 5 percent of an investor’s annual income or net worth. Moreover, Section 4A(h) states that the calculation of annual income and net worth should be in accordance with the rules for determining accredited investor status. We therefore ask that the SEC clarify that the crowdfunding investment limits exclude the value of the investor’s primary residence as is currently excluded from the accredited investor definition.

We are also concerned that the JOBS Act left primary enforcement of these annual investment limits to the crowdfunding intermediaries or portals. Intermediaries are required to “make such efforts as the Commission determines appropriate” to ensure that investors do not exceed the investment limits.³ The SEC’s proposal implements this requirement by requiring that crowdfunding portals have a “reasonable basis” to believe that the investors are within their investment limits.

In other words, crowdfunding portals may rely on self-certification by investors about their income and net worth, and the total amount of their crowdfunding investments made in the preceding 12 months. This check-the-box method of self-certification is inadequate to ensure that investors comply with the crowdfunding investment limits. We recommend that the SEC require the portals to be responsible for independently verifying the income and net worth stated by investors.

Consistent with the standard for having a “reasonable” basis to rely on the information provided by the investors, portals should have an obligation to conduct checks of the income and net worth of randomly selected investors. We also believe

² “SEC official sparks row over AIM ‘casino,’” Financial Times, March 8, 2007.

³ Section 4A(a)(8), 15 USC 77d-1(a)(8).

Ms. Elizabeth M. Murphy

February 3, 2014

Page 3

the SEC should provide more guidance on red flags for portals to detect unreliable income and net worth data, such as unexplained changes in income or net worth; income or net worth disproportionate to other information provided by the investor, the use of unusual assets with atypical valuations, and suggestive patterns of fraud by multiple investors providing identical information in the same offering.

Finally, we believe that a company's previous exempt offerings should be counted for the purpose of calculating the company's Section 4(a)6 limits on how much money can be raised through crowdfunding. Section 4(a)(6) only permits companies to issue up to \$1 million in unregistered securities over a 12-month period. Ignoring other exempt offerings will make crowdfunding available to larger companies, and thereby "crowd out" smaller companies that do not have other options for raising capital.

In conclusion, we urge you to strengthen the investor protection provisions in the SEC's final rule on crowdfunding. Thank you for taking the AFL-CIO's views into consideration regarding this matter. If the AFL-CIO can be of further assistance, please contact me at ([REDACTED]) or [REDACTED] .

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon J. Rees".

Brandon J. Rees
Acting Director, Office of Investment